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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DCR MORTGAGE 1, LLC, a Delaware
Limited Liability Company,

Plaintiff,

vs.

GARY L. SYLVER, an individual, and
DOES 1-10, inclusive,

Defendants.

Case No.:

**COMPLAINT FOR BREACH OF
WRITTEN GUARANTY AGREEMENT**

COMPLAINT

426062

1 Plaintiff DCR MORTGAGE 1, LLC ("Plaintiff") alleges its complaint for breach of written
2 guaranty against Defendant GARY L. SYLVER ("Defendant") as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) in that the parties are
5 citizens of different states and the amount in controversy exceeds seventy-five thousand dollars
6 (\$75,000), exclusive of interest and costs. The case involves breach of a loan guaranty, where the
7 underlying loan as described in greater detail herein was in the principal amount of \$3,185,000.00,
8 and the amount outstanding on Defendant's guaranty of said loan is \$1,531,823.87, an amount well
9 in excess of seventy-five thousand dollars (\$75,000.00).

10 2. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(b)(2), as
11 the majority of underlying acts and the breach occurred in Clark County, Nevada.

12 **PARTIES**

13 3. Plaintiff DCR MORTGAGE 1, LLC was at all times a limited liability company
14 formed under the laws of the state of Delaware, with its principal office in Florida.

15 a. The members of Plaintiff are Kijomo, LLLP, a Delaware limited liability
16 limited partnership, and five individuals. The individuals are residents of Florida and
17 California.

18 b. The members of Kijomo, LLLP are four individuals, all residents of Florida.

19 4. Defendant GARY L. SYLVER is an individual residing in Las Vegas, Nevada.

20 **GENERAL ALLEGATIONS**

21 5. On or around October 10, 2006, Allied Mortgage & Financial Corporation ("Allied
22 Mortgage") issued Pama Lane Holding Corporation ("Pama Lane") a loan in the amount of
23 \$3,185,000.00 (the "Loan"). The terms of the Loan were set forth in the Commercial Balloon
24 Promissory Note to Allied Mortgage (the "Note"), which is attached hereto as Exhibit A and
25 incorporated herein by reference. The Loan was secured by the following:

26 a. Two parcels located at 2020 Pama Lane, Las Vegas, Nevada, 89119 (the
27 "Property"),

28 ///

1 b. A Continuing and Unconditional Guaranty by Defendant, the President of
2 Pama Lane (the “Sylver Guaranty”); and

3 c. A Continuing and Unconditional Guaranty by Randall Robirds, an owner of
4 Pama Lane.

5 6. Beginning in December 2007 and every month thereafter, Pama Lane failed to make
6 payments due upon the Loan pursuant to the payment terms set forth in the Note.

7 7. To address this default, on or around June 25, 2008, the Loan was modified pursuant
8 to a Mortgage Modification Agreement, which established a new payment plan. The Mortgage
9 Modification Agreement is attached hereto as Exhibit B and incorporated herein by reference. The
10 principal balance on the Loan of \$3,185,000.00 remained unpaid. Under the new terms, the Loan
11 was set to mature on December 17, 2008 with the balance to be paid off on that date.

12 8. Pama Lane failed to make the required payments pursuant to the terms of the
13 Mortgage Modification Agreement.

14 9. On or around June 17, 2010, the Loan was modified once again in a Memorandum
15 of Modification of Note and Deed of Trust, which is attached hereto as Exhibit C and incorporated
16 herein by reference. The principal balance on the Loan of \$3,185,000.00 was still unpaid. The
17 maturity date of the Loan was extended to May 17, 2013.

18 10. On or around July 12, 2012, Allied Mortgage assigned the Loan to DCR Mortgage
19 IV Sub III, LLC (“DCR IV”), a Delaware limited liability company. The assignment agreement is
20 attached hereto as Exhibit D and incorporated herein by reference.

21 11. When the Loan matured yet again on May 17, 2013, Pama Lane once again failed to
22 pay the balance.

23 12. On June 19, 2013, DCR IV notified Pama Lane that it was again in default of the
24 Loan. At that time, Pama Lane owed DCR IV a total of \$3,188,975.08 for the outstanding principal
25 balance of the loan, interest owed, and miscellaneous fees.

26 13. On or around October 6, 2014, Pama Lane filed for Chapter 11 Bankruptcy. The
27 Loan was included as a liability, and the Property was included as an asset. A Court ordered the
28 sale of the Property on or about August 21, 2015 for a total amount of \$1,860,000, of which DCR
 IV would receive \$1,774,538.47.

1 14. On September 2, 2015, DCR IV entered into a forbearance agreement (the “Sylver
2 Agreement”) with Defendant regarding his personal guaranty of the Loan. The Sylver Agreement
3 is attached hereto as Exhibit E and incorporated herein by reference. At the time that the Sylver
4 Agreement was executed, a deficit balance of \$1,531,823.27 remained unpaid pursuant to the loan
5 obligations and the Sylver Guaranty. Pursuant to the terms of the Sylver Agreement, DCR IV
6 agreed to forbear exercising remedies against Defendant arising from obligations made in the Note
7 and the Sylver Guaranty in exchange for Defendant’s agreement to timely make monthly payments
8 of \$6,084.36 for thirty-six months, commencing on the date of the Sylver Agreement.

9 15. Defendant never made any of the monthly payments as set forth in the Sylver
10 Agreement. To date, Defendant has not complied with any of the terms of the Note, the Sylver
11 Guaranty or the Sylver Agreement.

12 16. On November 4, 2015, Defendant was notified that he was in default and owed a
13 deficit balance of \$1,531,823.87 plus the fees incurred in pursuing Defendant’s compliance.

14 17. On November 30, 2015, DCR IV transferred all rights and obligations owed to it
15 pursuant to the Note and the Guaranty, including all right in the Sylver Agreement to Plaintiff.

16 18. The deficit balance of the Sylver Agreement remains unpaid.

17 **FIRST CAUSE OF ACTION**

18 **(By Plaintiff against Defendant for Breach of Written Guaranty)**

19 19. Plaintiff refers to and herein incorporates each of the foregoing, as if fully set forth
20 herein.

21 20. Defendant, pursuant to the Guaranty, as modified by the Sylver Agreement, agreed
22 to guarantee all of Pama Lane’s obligations under the Loan.

23 21. Plaintiff has performed all covenants, conditions, and obligations on its part to be
24 performed pursuant to the Note and all subsequent modifications, the Sylver Guaranty, and the
25 Sylver Agreement.

26 22. Pama Lane did not repay the Loan upon maturity, and Defendant has not paid the
27 obligation now due pursuant to the terms of the Sylver Guaranty. This failure to pay constitutes a
28 breach of the material terms of the Sylver Guaranty.

23. As a result of Defendant's breach of the Sylver Guaranty, as modified by the Sylver Agreement, Plaintiff is entitled to repayment of the deficit balance of the Loan, late fees incurred as a result of Pama Lane's multiple defaults, as well as the costs associated with pursuing Pama Lane's and Defendant's compliance.

24. It has been necessary for Plaintiff to employ attorneys to prosecute this action, and Plaintiff should be permitted to recover its attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For the principal amount owed under the Loan, plus late charges, interest and collection costs, according to proof;

2. For attorneys' fees and costs, according to proof at trial, or by subsequent motion.

3. For additional sums, if any that Plaintiff hereafter expends to protect its interest in the Property according to proof.

Respectfully Submitted,

DATED: July 27, 2016

MICHELMAN & ROBINSON, LLP

By: /s/ Edward D. Vaisbort

EDWARD D. VAISBORT

Attorney for Plaintiff,

DCR MORTGAGE 1, LLC

DATED: July 27, 2016

DICKINSON WRIGHT, LLP

By: /s/ Justin J. Bustos

JOHN P. DESMOND

JUSTIN J. BUSTOS

Attorney for Plaintiff,

DCR MORTGAGE 1, LLC

EXHIBIT TABLE

Exhibit	Description	Pages¹
A	Commercial Balloon Promissory Note and Adjustable Rate Mortgage (ARM) Disclosure	7
B	Mortgage Modification	5
C	Memorandum of Modification of Note and Deed of Trust	5
D	Assignment of Note, Mortgage and Loan Documents	7
E	Forbearance Agreement	9

¹ Exhibit slip sheets are not included in the page counts.